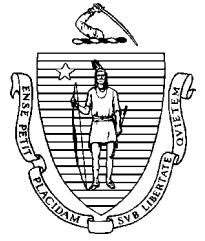




Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 516

IN THE MATTER OF GEOFFREY NEWTON

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Geoffrey Newton ("Newton") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 12, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Newton. The Commission has concluded its inquiry and, on October 19, 1994, found reasonable cause to believe that Newton violated G.L. c. 268A.

The Commission and Newton now agree to the following findings of fact and conclusions of law:

1. At all relevant times, Newton was employed as the Building Inspector for the Town of Royalston. This was a part-time position to which Newton was appointed by the Royalston Board of Selectmen and for which he was paid an annual salary of \$5,000. As the Royalston building inspector, Newton was a municipal employee as that term is defined in G.L. c. 268A, §1(g).
2. Newton's official duties as the Royalston building inspector included issuing building permits for construction done in the town and performing inspections to ensure that all work performed pursuant to such permits complied with the state building code.
3. At all relevant times, Newton's brother, Wayne Newton ("Wayne") was self-employed as a carpenter and building contractor.
4. On the following dates, and at the places indicated, Newton, in his capacity as the Royalston Building Inspector, issued the following building permits to his brother Wayne:
 - (a) on February 23, 1989, a permit to build an entryway and mud room at a North Fitzwilliam Road property;
 - (b) on September 19, 1990, a permit for re-roofing at a South Royalston Road property;
 - (c) on September 26, 1990, a permit for a garage addition to a Frye Hill Road property;
 - (d) on May 27, 1991, a permit for a temporary ramp at an Athol Road property;
 - (e) on May 18, 1992, a permit for the re-silling of a barn at a Main Street property;
 - (f) on May 12, 1993, a permit for bathroom renovations at an Athol Road property;
 - (g) on June 30, 1993, a permit for interior renovations at an Athol Road property;

(h) on June 30, 1993, a permit for a home built on Athol Richmond Road; and

(i) on September 19, 1993, a permit to build a barn at an Athol Richmond Road property.

5. Section 19 of G.L. c. 268A, except as permitted by paragraph (b) of that section, prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he or an immediate family member has a financial interest. None of the exceptions contained in §19(b) apply in this case.

6. The decisions to issue the building permits listed in paragraph 4, above, were particular matters.

7. As set forth in paragraph 4, above, Newton participated as a building inspector in those particular matters by issuing the building permits.

8. Wayne, as the contractor performing the permitted work, had a financial interest in the issuance of each of the above-listed building permits. Newton knew of his brother's financial interest at the time he issued each of the building permits.

9. Accordingly, by issuing the building permits to Wayne, as set forth in paragraph 4, Newton participated in his official capacity in particular matters in which he knew an immediate family member had a financial interest, thereby violating G.L. c. 268A, §19.

10. Newton cooperated with the Commission's investigation.

11. Newton testified that it was common knowledge in his town that he was issuing permits to Wayne and that his appointing authority, if asked, would have been inclined to grant him an exemption pursuant to §19(b)(1) of G.L. c. 268A.^{1/} While there is some evidence supporting Newton's contention, the exemption in fact was never sought and cannot be granted retroactively.

In view of the foregoing violations of G.L. c. 268A by Newton, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Newton:

(1) that Newton pay to the Commission the sum of five hundred dollars (\$500.00)^{2/} as a civil penalty for violating G.L. c. 268A as stated above; and

(2) that Newton waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 6, 1995

^{1/} Section 19(b)(1) provides that it is not a violation of §19 if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

^{2/} That Newton's penalty is not higher reflects the fact that his appointing authority was generally aware of his actions. Nevertheless, strict compliance with the written disclosure and authorization provisions of §19(b)(1) is necessary to ensure that all due consideration is given to issues with potential controversy and the potential for abuse. Had Newton followed the proper exemption procedure, the selectmen may have concluded at that time that an alternate building inspector should issue the permits.